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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SEVEN

In re L.T., a Person Coming Under the Juvenile Court Law.	B219926 (Los Angeles County Super. Ct. No. CK 77303)
LOS ANGELES COUNTY DEPARTMENT OF CHILDREN AND FAMILY SERVICES, Plaintiff and Respondent, v. T.E., Defendant and Appellant.	

APPEAL from an order of the Superior Court of Los Angeles County. Marilyn H. Mackel, Juvenile Court Referee. Affirmed.

Daniel G. Rooney, under appointment by the Court of Appeal, for Defendant and Appellant.

James M. Owens, Assistant County Counsel, and O. Raquel Ramirez, Deputy County Counsel, for Plaintiff and Respondent.

T.E., the mother of minor L.T., appeals from the disposition order in which the court found there was a substantial risk of detriment if L. was returned to appellant's custody. Appellant contends there was insufficient evidence that returning L. to her posed a substantial danger. We affirm.

FACTUAL AND PROCEDURAL SYNOPSIS

On May 19, 2009, respondent Los Angeles County Department of Children and Family Services (Department) filed a Welfare and Institutions Code section[1] 300 petition on behalf of L., who was just under two years old. L. was described as medically fragile and developmentally delayed. L. was born preterm at the gestational age of 30 weeks and weighed about three pounds. Appellant was incarcerated at the time of L.'s birth.

I. Detention

A. Department Reports

While living in Las Vegas, appellant had been contacted by social services in August, September and December 2007; those referrals were listed as for information only or closed as unsubstantiated. There was also a February 2009 referral in Los Angeles County that was closed as inconclusive.

According to the Department, appellant had not ensured L. was "receiving appropriate follow up care for treatment of his current medical conditions of cerebral palsy, sickle cell anemia trait, asthma and periventricular leukomalacia." Appellant also failed to ensure L. received "appropriate Regional Center services on a regular, consistent basis."

1. 2008

In July, L. was hospitalized for a peptic ulcer that resulted from appellant administering him Motrin on a daily basis for teething. L. was scheduled to see a

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[1] Unless otherwise noted, all statutory references are to the Welfare and Institutions Code.

gastroenterologist a week after his hospitalization, but appellant rescheduled the appointment for August. L. also was scheduled to see a neurologist in August.

In late July, L. was assessed by the Regional Center and found eligible for services. Appellant was vague about many of L.'s medical details. The evaluators told appellant to keep all of L.'s medical appointments in order for him to be in the best possible health and encouraged appellant to obtain an ophthalmologist referral for his vision issues.

The Regional Center coordinator contacted appellant in August. Appellant missed an appointment in October so services were not activated until after a meeting in November. The Regional Center recommended L. receive therapeutic services and physical therapy services twice a week for six months. Due to scheduling problems, appellant's unavailability, the therapist's personal issues, and appellant's move to Lancaster, L. only received therapy on two occasions prior to February 2009.

Appellant did not appear for L.'s initial Regional Center individualized family services plan (IFSP) meeting in September. On November 7, appellant attended the rescheduled IFSP meeting. L. qualified for early start services. The services coordinator cancelled L.'s audiologist consultation as appellant had not utilized the service when it was authorized.

Appellant was not home for a scheduled physical therapy appointment on December 10. By December, L. still had not received a neurological evaluation.

2. 2009

As of January, the infant teacher had not been able to see L. because appellant did not make herself available for or cancelled appointments. Appellant said she needed to reschedule L.'s semi-annual IFSP meeting.

In February, appellant was advised to bring L. in to the doctor's office to be seen; she arrived late and had to bring him back in March. Appellant said she had not followed up with a gastroenterologist or neurologist or made an appointment with L.'s pediatrician

because the providers were "too full" whenever she called to make appointments. The coordinator noted the service providers continued to have a difficult time getting a hold of appellant, who either cancelled or did not make herself available for appointments, e.g., appellant cancelled an appointment for February 17 with the infant teacher and said she would not be available for another two weeks.

L. was scheduled to attend a high risk infant clinic on April 8, but appellant did not show up for the appointment. The appointment was rescheduled for 11 a.m. on April 21, but appellant did not show up until later in the afternoon. L. was detained before the rescheduled exam on May 20.

The family came to the attention of the Department on May 8 as a result of a child abuse hotline referral alleging severe neglect and physical abuse of L. by appellant. L. was at the home of appellant's cousin Rochelle on May 7 when he began vomiting after dinner. The paramedics transported L. to the hospital after L. was found lying face down in a pool of vomit. The Department detained L. at the hospital and filed a section 300 petition. When L. was released from the hospital, he was placed in a medical foster home.

Dr. Hany Ashamalla, the treating physician, observed that given his weight and height, L. "was under the 5th percentile in his age group." Dr. Ashamalla was concerned about releasing L. to appellant because L.'s needs were not being met, he felt appellant should have been feeding L. more, and she had a prior child abuse referral history. Dr. Ashamalla, who was unsure of the cause of L.'s vomiting, stated the fact L. had gained weight so quickly while in the hospital indicated previous neglect. Dr. Ashamalla noted L. needed a lot of physical therapy, especially for his legs, and needed to be adequately nourished, but appellant had told him she was not able to feed L. a lot due to limited resources.

Appellant said she left the child with her cousin Rochelle, who appellant considered an appropriate caretaker. Appellant dropped the child off with diapers, food, and money or food stamps and would contact Rochelle on a daily basis. Appellant stated

her cousin could contact her using the information available on her caller ID. Rochelle, who stated appellant would leave the child for several days without notice and without providing necessities, claimed she did not have appellant's new telephone number.

When appellant was interviewed by a social worker (CSW), she indicated she was pregnant and feeling stressed and needed to go outside to have a cigarette. When the CSW advised appellant that smoking during her pregnancy would be detrimental to her unborn baby, appellant said she did not know that. The baby was born premature and died. Appellant denied L. was underweight and said he ate a lot. Appellant also denied missing any of L.'s medical appointments and said the offices called her "'out of nowhere'" to make appointments she was unable to keep.

The Department initially decided to allow L. to remain in appellant's custody provided she sign a safety plan and agree to feed him appropriately, not smoke around him and not leave him with her cousin; appellant signed the plan.

B. The Hearing and Subsequent Events

The court found continuance in appellant's home was contrary to L.'s welfare and reasonable efforts had been made to allow him to remain with appellant, but those efforts had failed. The court detained L. and ordered appellant to participate in a team decision meeting (TDM) to discuss a voluntary family maintenance (VFM) contract that would allow L. to be placed in her care if she had an appropriate plan to meet his needs. The court ordered monitored visits.

A TDM meeting was held on May 22. The Department noted some concerns: L. had extensive medical issues; further documentation was needed regarding appellant's compliance with L.'s medical treatment; L. had lost 30 percent of his body weight in the past six months while in appellant's care; appellant appeared to lack knowledge of and was in need of specialized training to better provide for L.'s medical needs; and appellant had recently lost her unborn child. L. remained in his foster home. At the meeting,

appellant was defensive and took no responsibility for her actions. Appellant said she would not try to regain custody of L. if he were detained, but she agreed to participate in a VFM contract, including an upfront assessment.

LaShanda Gilbert conducted the assessment. Appellant admitted that her mother had a history of illegal drug dependency and mental illness and that she (appellant) had been treated for psychological difficulties in the past, once in a hospital setting and once as a private patient or outpatient, and been prescribed medication for psychological or emotional problems. Appellant accused the CSW, her foster mother and her cousin of exploiting her to try and take away L.'s social security payments. Throughout the assessment, appellant stated if L. were detained, she would not do anything to get him back and she did not have time to complete parenting classes because she attended school four days a week and had to continue attending in order to get financial aid.

Gilbert observed appellant had many mental health issues, was emotionally unstable, and "'not all there.'" Gilbert described appellant as very defensive and combative and said appellant's story had "'holes in it.'" Gilbert opined appellant did not take any responsibility for her actions and made excuses for not being able to meet L.'s needs. Gilbert concluded appellant might have a borderline personality disorder and recommended appellant participate in psychiatric treatment, individual counseling, parenting and anger management classes and submit to a psychiatric evaluation. Gilbert believed appellant might have more of a mental health background than she was willing to disclose.

The CSW spoke with Rochelle, who revealed appellant often dropped L. off at her home and disappeared for a few days without contacting her. Rochelle said appellant never called to check on L., failed to provide her a working telephone number, did not show any love for L, was "'all about herself,'" always partying, did not seem to care about L., did not hold L., and always neglected L.

Dr. Ashley Margol with LAC/USC Medical Center confirmed that L.'s condition was indicative of neglect by appellant and stated L. should be receiving Regional Center services.

The Department offered appellant a voluntary family reunification (VFR) contract in lieu of the VFM contract, which had been disapproved by the assistant regional administrator (ARA). Appellant refused, stating she would not voluntarily give up L. When the CSW tried to explain that if appellant did not accept the offer, the Department would have to detain L., appellant said she would speak with the ARA and walked away. Appellant went to a Department office and met with a supervising social worker, who informed her there would be a detention hearing the following Tuesday. Appellant told the social worker to just "'keep the child'" and left.

II. Adjudication

A. Pre-release Investigation

Cousin Rochelle reiterated that appellant did not have patience with L. and left him with her without notice, did not call to check on him and got angry when she called appellant. Rochelle indicated appellant had "'something wrong with her,'" would not take medication, and stayed up all night smoking.

In June, the Regional Center held an IFSP meeting and agreed to provide in-home infant development services to L. and complete other assessments. Also in June, L. was seen by an ophthalmologist and prescribed glasses and seen at the high risk infant clinic where a development assessment was completed.

Appellant denied she had ever been diagnosed with mental health issues or been on medication for "mind control." Appellant stated she had received counseling for anger management in the past. Appellant said she always called and checked on L. and gave Rochelle money and food for him. Appellant did not know what she had done wrong and believed she had not done anything wrong.

The Department reported there had been issues with appellant's visits, including her missing or arriving late to several visits. The CSWs reported that appellant preferred to speak with adults rather than interact with L. during the visits and that when L. cried, she looked to a CSW for direction and seemed not to know what to do.

B. Hearing and Subsequent Events

The court noted there were concerns about the care provided by appellant, the care L. was provided while appellant was in school, and the possibility appellant was rough with L. The court found that L., who had special needs, required consistency and continuity of care, and it was possible appellant needed parenting education and other direction. The court found the Department had made the prima facie showing necessary for detention. When appellant complained she was not receiving her visitation and had dropped her college classes, the court ordered appellant was to have a minimum of two to three visits a week and ordered the Department to provide her with transportation funds and a bus pass to facilitate visitation, but appellant said she had a car. The court gave the Department discretion to liberalize visitation.

On August 25, appellant signed the interim IFSP so L. could begin receiving services. ~

The Department provided appellant with transportation funds for June and July. Appellant missed one week of visits because she hurt her ankle and was immobile. Appellant declined an extended visit to attend a parenting class and ended visits early on four dates. Another visit was cancelled after appellant called an hour after the visit was to begin. Appellant interacted with L. in a loving, positive manner during visits.

In August, appellant enrolled in parenting education classes and had an intake appointment for individual counseling. The Department was concerned appellant had not enrolled in individual counseling despite being advised to do so back in May.

At the September continued hearing, appellant submitted to jurisdiction based on the amended petition; the court sustained allegations that on occasion, appellant had failed to follow up with medical and Regional Center appointments and failed to make an appropriate plan for the child when she left him with Rochelle. The court ordered the Department arrange for appellant to be present for L.'s Regional Center appointments.

III. Disposition

A. Department Reports

In October, the Department reported appellant, who was pregnant, was participating in L.'s weekly physical and occupational therapy, but participation in his therapeutic sessions had yet to be arranged. Transportation issues meant appellant was not participating in L.'s educational and optical therapies. Despite reasonable explanations about L.'s recent injuries, appellant insisted he was being mistreated in the foster home. The CSW noted appellant had told her on various occasions that she believed L. would be returned to her if there were safety issues in the foster home.

Appellant had completed parenting classes and begun individual counseling. Dr. Madelen Lorelei, the monitor, reported appellant often appeared frustrated with L. and seemed not to understand his "medical condition of cerebral palsy." Appellant frequently arrived late for L.'s therapy appointments. Appellant became frustrated when L. could not "do movements and activities" that she believed he should be able to do. Dr. Lorelei reported appellant lacked the tools to calm L. when he was upset. During visits, appellant did "not address the child's needs, such as changing the child's diapers." Appellant even told L., "'you smell,'" and then distanced herself rather than change his diapers.

The last minute information reported the physical and occupational therapists had concerns about appellant's ability to care for L. and his special needs; the information stated appellant was "'really naïve'" about L.'s "medical condition . . . despite the countless attempts to educated the mother about the child's cerebral palsy symptoms." Appellant had been told L.'s medical condition was life-long, but she continued to ask

when his condition would "'go away.'" The program manager recommended appellant participate in training sessions for parenting children with special needs.

Appellant continued to frequently arrive late to her visits; she said she was late due to school scheduling conflicts, but when the Department offered to change visit times, she declined. Appellant's visit on September 17 was cancelled when she called 17 minutes after the visit was to began to say she would be late. Appellant cancelled visits on September 22 and October 20 citing medical issues. Appellant stated she had transportation issues, but was unwilling to take the bus. Appellant said her boyfriend provided transportation, but admitted his license was expired and his car was not registered. The Department offered appellant funds to reimburse her for travel.

B. Contested Hearing

Appellant testified that in parenting class, she had learned how to be more patient with L. and spoke about her progress in counseling. Appellant admitted she was overprotective of L. and spoiled him. Appellant visited L. twice a week and brought him snacks and games and taught him his ABCs and numbers. In working with the Regional Center therapist, appellant had learned about L.'s disease and the exercises he required.

Appellant claimed L. would be safe in her custody, he had never been injured while she was caring for him, when he became very sick, she rushed him to the hospital, and her parenting skills were up to the task of supervising him, but she also believed parenting came naturally or automatically. As L.'s medical and service appointments were set on a regular basis, appellant said she was "pretty sure" she would be able to maintain those appointments.

The parties stipulated that appellant's former foster mother would have testified that prior to detention, she had observed appellant interact with L. and thought appellant displayed appropriate parenting techniques, was patient with him, and was loving and

nurturing. Appellant had never given the foster mother any reason to be concerned about L.'s safety.

Appellant's counsel argued that given the many affirmative steps appellant had taken and the positive interaction between her and L., L. should be released into her custody. Counsel for the Department and L. argued against releasing L. to appellant's custody and asked for an Evidence Code section 730 evaluation due to concerns with appellant's possible mental health issues.

Appellant repeatedly interrupted the court to question the orders for the evaluation and removal of L. from her custody. The court explained the record was clear that from L.'s birth, there were issues appellant had not dealt with and it wanted to be certain she had the potential to be successful in the services and treatment it had ordered so L. could be returned to her. When the court explained to appellant that L. would never walk normally, she said she knew that but wanted to know why he could not walk. Appellant stated her son was taken "for nothing" and exited the courtroom.

The court found by clear and convincing evidence that there was substantial risk of detriment to L. if he were to be returned to appellant's custody. Among other things, the court ordered family reunification services, including individual counseling to address case issues and one-on-one Regional Center training for parenting for special needs children. The court ordered appellant submit to an Evidence Code section 730 evaluation.

Appellant filed a timely notice of appeal from the disposition order and findings.

DISCUSSION

Appellant contends L. should have been returned to her custody as leaving (i.e., returning) L. with her did not pose a substantial danger to him and there were reasonable means available to add an additional layer of protection for him. Appellant claims the record fails to show L. had suffered physical or emotional injury or was likely to suffer physical or emotional harm if returned to her custody.

"Before the court may order a minor physically removed from his or her parent, it must find, by clear and convincing evidence, the minor would be at substantial risk of harm if returned home and there are no reasonable means by which the minor can be protected without removal. (§ 361, subd. (c)(1).) A removal order is proper if it is based on proof of parental inability to provide proper care for the minor and proof of a potential detriment to the minor if he or she remains with the parent. The parent need not be dangerous and the minor need not have been actually harmed before removal is appropriate. The focus of the statute is on averting harm to the child." (Citation omitted.) (*In re Diamond H*. (2000) 82 Cal.App.4th 1127, 1136 disapproved on another point in *Renee J. v. Superior Court* (2001) 26 Cal.4th 735, 748, fn. 6; see also *In re Christopher H.* (1996) 50 Cal.App.4th 1001, 1008 ["[W]hen the court is aware of other deficiencies that impede the parent's ability to reunify with his child, the court may address them in the reunification plan."].)

"We review the record in the light most favorable to the trial court's order to determine whether there is substantial evidence from which a reasonable trier of fact could make the necessary findings based on the clear and convincing evidence standard. Clear and convincing evidence requires a high probability, such that the evidence is so clear as to leave no substantial doubt." (Citation & italics omitted.) (*In re Isayah C.* (2004) 118 Cal.App.4th 684, 694-695.) The burden of proof is substantially greater at the disposition phase than at the jurisdiction phase if the minor is to be removed from his home. (*Id*., at p. 694.)

Appellant argues she was capable of and did arrange necessary appointments and services for the child, she was better able to perform with structured guidance and assistance, and very much desired to be involved with the Regional Center services available to L. Appellant claims the record shows that once a routine was established, she was able to carry through with appointments and be actively involved in her son's therapy programs.

What appellant is actually stating is that she would do better in the future. However, there was substantial evidence in the record supporting the court's decision not to return the child to appellant's custody due to concerns about appellant's ability to carry out her promises. As detailed above, appellant had constant problems seeing that L. made his medical and therapy appointments. During 2008 and 2009, L. missed numerous medical appointments, and appellant failed to ensure he received essential Regional Center services.

For example, between July 2008 and March 2009, appellant rescheduled L.'s neurology appointment many times and still had not taken him for an appointment when he was detained. From June to October 2008, appellant failed to take L. for his regular exams or to the clinic. In July 2008, after L. was diagnosed with a peptic ulcer and referred to a gastroenterologist, appellant rescheduled his appointment to August, but she still had not taken him to see a gastroenterologist by February 2009. Even though appellant was encouraged to obtain an appointment for L.'s vision issues in July 2008, she did not take him to an ophthalmologist until March 2009. Although L. had been authorized to undergo an audiology assessment, that service was cancelled after appellant failed to utilize it. Appellant's record with respect to L.'s Regional Center services was similarly characterized by rescheduled and missed appointments.

In addition, appellant left L. with relatives without the necessary provisions for his care and support. When L. was detained he was underweight, which the doctors stated was a sign of prior neglect. Appellant told Dr. Ashamalla she was not able to feed L. due to limited resources, but she told the CSW that L. ate a lot.

Similarly, although appellant visited L. regularly, she missed some visits, was late to others and cancelled other visits, and her visits were still monitored. The monitor noted that during visits, appellant appeared frustrated with L., seemed not to understand his cerebral palsy, lacked the tools to calm him when he was upset, and did not address his needs. Appellant claimed she had transportation issues, but refused to take the bus to appointments, and even though she said her boyfriend provided transportation, she

admitted his license was expired and his car was not registered. Several times appellant stated she would not try to regain custody of L. if he were detained and even told one social worker to "'keep the child.'"

Appellant asserts she took L. to the doctor and Regional Center for services, but it was not as consistently and frequently as the Department thought necessary. Appellant understates the Department's (and the court's) concerns. The critical factor in this case is that L. was a medically fragile, developmentally delayed child with many medical conditions, i.e., cerebral palsy, sickle cell anemia trait, asthma and periventricular leukomalacia. Thus, keeping up with L.'s many medical and therapeutic appointments was essential for his health. In the case of a healthy child, a few missed appointments would not have been as significant.

Although there were no sustained allegations about appellant's mental health, there were concerns about her ability to understand L.'s condition. The court ordered a 730 evaluation. Even though appellant told the CSW in May 2009 that L. had cerebral palsy, at the disposition hearing in October, she claimed L. had recently been diagnosed with cerebral palsy. Appellant claims she made a few anomalous remarks that "seemed to reflect a need for education about [L.'s] cerebral palsy condition," but her statements showed a consistent inability or refusal to accept her son's limitations. L.'s therapists made countless attempts to educate appellant about L.'s cerebral palsy, but she continued to ask when he would be able to walk and why he was not able to do things that other children his age were able to do and when his condition would go away. Moreover, although appellant had completed a parenting class, the program manager recommended appellant participate in training sessions for parenting children with special needs.

Given L.s fragile medical condition coupled with appellant's lack of understanding or acceptance of that condition as well as her history of problems with visits and appointments, her resistance to transportation assistance, the court was properly concerned about appellant's ability to make sure L. kept his necessary medical and therapeutic appointments in a timely manner. Hence, this case is not one where the child

could be returned to the parent under supervision. (See *In re H.E.* (2008) 169 Cal.App.4th 710, 723-724; compare *In re Basilio T.* (1992) 4 Cal.App.4th 155, 171-172.)

Thus, substantial evidence supports the disposition order.

DISPOSITION

The order is affirmed.

WOODS, J.

We concur:

PERLUSS, P. J.

ZELON, J.